IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.853 OF 2005
IN
SUIT NO.1886 OF 1983

Messrs.Jaydip Transport Company. Appellant
vs.
M/s.Wipro Products Limited & anr. Respondents

Mr.Vinod Sharma for the appellant.

Ms.S.S.Dwivedi for the respondents.

**CORAM : R.M. LODHA &**
**ANOOP V. MOHTA, JJ**.

**DATED : 3rd March 2006**

**P.C.**

On 7th July, 2005, the learned Single Judge passed the order thus:

"None for the plaintiff

Mr.Prashant Naik for the defendants.

. CORAM: D.G. KARNIK, J.

DATED: 7th July 2005.

P.C.:

. The suit is for recovery of money. For a period of 20 years, defendant has not filed written statement. In the circumstances, suit of the plaintiff is decreed under Order 8 Rule 10 of the Code of Civil Procedure in terms of the prayer clause (a) and (b)."

2. From the order dated 7th July, 2005, it is apparent that on behalf of the plaintiff, none was present. Even

if the defendant did not file any written statement, there was no question of passing the decree on that day because the plaintiff was absent. Rather for want of appearance on behalf of the plaintiff the Suit was liable to be dismissed. It appears to us that by passing the decree even when plaintiff was absent, the learned trial Judge committed serious error.

3. The order/decree dated 7th July 2005 cannot be sustained and it is set aside. Suit No.1886/1983 is restored to the file. Suit to proceed further in accordance with law now.

. No costs.

**(R. M. LODHA, J.)**

**(ANOOP V. MOHTA, J.)**